REMARKS

Applicants respectfully request reconsideration followed by allowance.

PTO is deemed responsible for delays.

Applicants at the outset acknowledge the Examiner's courtesies and appreciate his cooperation. Applicants point out the Examiner cannot be personally responsible for lapses in other departments within the PTO in the handling of this application file.

Nonetheless, to ensure a complete record, Applicants respectfully point out that the October 30, 2002 *fourth* written request to the PTO to correct its records went unanswered for months. It is respectfully submitted that a reasonable person reviewing this file would conclude that the PTO had communicated at least twice in writing with a law firm having *no* lawful power of attorney in this application. It is respectfully submitted that such a reasonable person would also conclude the aforementioned written communications occurred despite Applicants' several written requests for the PTO to correct its records.

It is unfortunate that the PTO failed to update its records despite repeated written requests to do so, and therefore in fairness consistent with the statutory requirements of the AIPA, it is respectfully considered that the PTO is responsible for the delay in patent prosecution.

Request to enter this Amendment

In view of the government mistakes noted above, Applicants respectfully request leniency and thus entry of this Amendment so as to avoid any further undue delays in prosecution. The Examiner's courtesy in such regard will be very much appreciated.

It is respectfully submitted that the amended claims may resolve formality issues, avoid new matter, do not increase the number of claims presented, and do not present new issues for examination.

Amended claims

Applicants respectfully request the Examiner to reconsider and withdraw objections based on matters of form. If there are any questions, please call the undersigned.

Amended claim 13 makes explicit what was implicit in the defined term "developing." The present specification defines developing as seen from the paragraph bridging pages 4 and 5. (Adding the verbiage to claim 13 is not a new issue as seen by comparison to claim 28.)

Applicants respectfully request the Examiner to reconsider and withdraw the formality rejection of claim 21. Applicants acknowledge with appreciation the Examiner's constructive suggestions for presenting claim 21 in more explicit language to clarify what was implicit in the claim as earlier presented. Amended claim 21 accordingly recites "kneader," which is consistent with the specification at page 5, lines 1-6, and the maximal torque recited can be considered with respect to the mixture being kneaded in the kneader, as seen from the specification throughout, including the Examples.

Applicants amended claim 25 to correct the spelling of a word.

Applicants amended claim 26 in a manner consistent with the original specification, including original claims, and respectfully request the Examiner to withdraw the objection.

Applicants amended claim 27 in a manner consistent with their originally filed specification in an effort to improve readability, and respectfully request the Examiner to withdraw the objection.

Claims 13-27 define unobvious inventions over the Hashimoto reference.

Claims 13-27 each defines a novel, unobvious invention under 35 U.S.C. §103 over the Hashimoto et al. reference. (The present Office Action does not refer to any other reference as part of the rejection as paragraph 5 is currently understood.)

Claim 13 refers to "developing vital wheat gluten" and it is specifically noted that developing is a defined term in the present specification as seen from the paragraph bridging pages 4-5. Applicants propose the amended claim 13 in a manner consistent with the definition but they do respectfully submit that since the term was defined, the definition would have been thought to have been applicable anyway.

The Hashimoto et al. reference concerns denatured gluten, and has been cited for developing a non-denatured (or at least essentially non-denatured) wheat gluten, or vital wheat gluten. The Hashimoto et al. reference (USP 3,814,815) relates to methods of manufacturing base gum of chewing gums. Gluten denatured to more than 10% is used as the raw material. Example 1 refers to the use of dry denatured gluten (25% denatured) and glycerin containing water (= a mixture of two parts glycerin and 1 part water).

Adding denatured gluten to glycerin that contains water would not have taught or motivated a person of ordinary skill in the art to undenatured gluten or vital gluten. The Examiner will appreciate that denatured gluten has a lower MW than gluten. Gluten is less soluble in a non-aqueous medium, and would have been expected to require higher content of water, and yet the current invention has demonstrated that non-denatured (or essentially non-denatured) gluten can be developed in a non-aqueous medium containing less than 20% of water (see , e.g., claim 13).

Claims 13-28 define unobvious inventions over the Kobayashi et al. reference.

The Kobayashi et al. reference (USP 5,603,977) relates to a gummy starch and method for preparation of the same. It provides a gummy starch prepared by combining a starch and saccharide and subsequently heating the mixture. The main topic of the

invention is the gummy starch which can be used together with other "gummy" products. This is the correct reading of Example 17. In this Example, 10 g of gummy starch (prepared according to Example 1) are kneaded together with 5 g of rice-wax and 5 g of gluten. In total, 20 g "gummy" products are applied, of which 1/4 by weight is gluten. Furthermore, 2.5 g of glycerol is added. One would be remiss indeed to characterize this as a kneading method of gluten in glycerol. Besides, gluten is only a small part of the 'gummy' product available and only a minor amount of glycerol is used. Since gluten is only mentioned really in passing in a gummy product (chewing gum) of Example 17, it is already clear that kneading of gluten is certainly not the thrust of USP 5,603,977 and this means the rejection has its genesis in hindsight.

It would also appear that the Kobayashi et al. reference does not teach kneading in a kneader at a temperature of between 50°C and 90° C; continuing the kneading in the kneader until a value representing at least 75% of the maximal torque for the mixture being kneaded in the kneader is reached; and shaping the developed gluten into a desired form.

Claims 13-28 define unobvious inventions over the Shaw reference.

The presented elected claims would have been unobvious to a person of ordinary skill in the art over the Shaw reference. The Shaw reference (USP 5,366,740) relates to chewing gum comprising wheat gluten and the methods for manufacturing such compositions. The method for preparing the chewing gum begins with blending wheat gluten and texturizing agents. The liquid components, including water and glycerol, may be added to the powder in a low-shear mixer and then the mixing may be completed in a higher-shear mixer. Glycerin and water are used in a ratio of 2 parts glycerin per part of water (= 31% water - see Example 1, column 5). The current invention has demonstrated that vital wheat gluten, which is essentially not denaturated, can be developed in non-aqueous medium containing less than 20% of water.

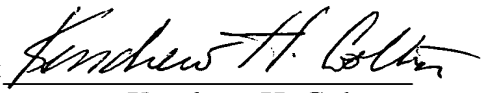
It would also appear that the Shaw reference does not teach kneading in a kneader at a temperature of between 50°C and 90° C; continuing the kneading in the kneader until a value representing at least 75% of the maximal torque for the mixture being kneaded in the kneader is reached; and shaping the developed gluten into a desired form.

If the Examiner has any questions, please contact the undersigned by telephone. Applicants want to ensure all matters are addressed and resolved.

Applicants do, however, respectfully submit they have endeavored to respond to all issues and respectfully submit that their claims are in condition for allowance. Applicants respectfully, but earnestly solicit Notice to such effect.

Respectfully submitted,

FITCH, EVEN, TABIN & FLANNERY

By: 

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FORM PTO-1083

1761.4

PATENT

Attorney Docket No. 7393/71919

In re Application of: DE SADELEER
Application No. 09/612,238
Filed: July 7, 2000
For: THE DEVELOPMENT OF VITAL WHEAT GLUTEN IN NON-AQUEOUS MEDIA

COMMISSIONER FOR PATENTS
Washingt n, D.C. 20231

June 25, 2003

Sir:

Transmitted herewith is a response to an office action in the subject application.

☐ small entity status of this application under 37 CFR 1.27.

DUE DATE: August 13, 2003

■ Petition For Extension Of Time
☐ for an one-month extension of time under 37 CFR 1.136, the fee of $110.00 is enclosed.
■ petition for an extension of time is **NOT** necessary. However, to the extent that such petition is deemed necessary, for a sufficient extension of time to render the present submission timely. Please charge Deposit Account No. 06-1135 for the appropriate petition fee.

■ No additional claim fee is required.

☐ Other:

The claim fee has been calculated as shown below:

	Claims Remaining After Amendment		Highest Number Previously Paid For	Extra Claims Present	Small Entity Rate	Small Entity Addit. Claim Fee	Other Than A Small Entity Rate	Other Than A Small Entity Addit. Claim Fee
Total	18	Minus	20	0	x 9=	$	x 18=	$00.00
Independent	4	Minus	3	1	x 40=	$	x 84=	$84.00
☐ First Presentation of Multiple Claim					+ 135=	$	+ 280=	$
					Total	$	Total	$84.00

☐ Please charge my Deposit Account No. 06-1135 in the amount of $0.00, under Order No. A duplicate copy of this sheet is attached.

☐ A check in the amount of $0.00 is attached.

■ The Commissioner is hereby authorized to charge any deficiencies in the following fees associated with this communication or credit any overpayment to Deposit Account No. 06-1135. A duplicate copy of this sheet is attached.
■ Any filing fees under 37 CFR 1.16 for the presentation of extra claims.
■ Any patent application processing fees under 37 CFR 1.17.

Respectfully submitted,

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